

REMARKS

SUMMARY OF THE AMENDMENTS

AMENDMENTS TO THE CLAIMS

Claim 11: Made dependent on newly-independent Claim 29.

Claim 29: Rewritten in independent form due to the cancellation of independent Claim 1, upon which it was previously dependant. Support for the requested amendment may be found in the specification as originally filed at Figure 10 and in paragraphs 40, 121 and 122.

Claim 32: Made dependent on newly-independent Claim 29.

None of the foregoing amendments to the Claims expands the scope of the invention or add new matter to the specification. Entry of the requested amendments and favorable consideration of the comments contain herein are now requested.

Applicants now address each of the Examiner's objections in turn.

OBJECTION TO THE DRAWINGS

In paragraph two on page two of the Office Action dated 5 June 2007, the Examiner objected to the drawings under 37 CFR 1.83(a), stating that: "they fail to show the detailed limitations of amended claim 9."

Applicants herein cancel Claim 9, thus rendering the foregoing objection to the drawings based on Claim 9 as moot. As Claim 9 is no longer pending in the instant application, Applicants respectfully request withdrawal of the objection to the drawings. Further consideration of the specification and claims is therefore urged at this time.

OBJECTIONS BASED ON 35 U.S.C. §112

In the Office Action dated 5 June 2006, in paragraphs three through six on page three, the

Examiner objected to Claims 9, 10 and 12 variously under 35 U.S.C. §112, first and second paragraphs, as “failing to comply with the written description requirement” and as being indefinite for “failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.”

Applicants herein cancel Claims 9, 10 and 12, thus rendering the foregoing objection to the claims based on 35 U.S.C. §112, first and second paragraphs, as moot. As Claims 9, 10 and 12 are no longer pending in the instant application, Applicants respectfully request withdrawal of the objections under 35 U.S.C. §112. The Office is encouraged to withdraw the instant objection and favorably consider the specification and claims towards allowance.

FIRST OBJECTION BASED ON DOUBLE PATENTING

In paragraphs seven and eight on pages four and five of the Office Action dated 5 June 2007, the Examiner objected to Claims 1, 4, 9-12, 15 and 29-32 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5, 20, 10, 11, 16-18, 25, 26, and 28 of U.S. Patent No. 6,634,864. Applicants herein cancel Claims 1, 4, 9, 10, 12, 15 and 31, and amend Claims 11, 29 and 32.

As amended herein, newly independent Claim 29 recites the improvement to a capillary device for releasing vapor at a velocity greater than zero, comprising at least one gas release passageway for the escape of dissolved gas from the capillary device. As indicated above, support for the requested amendment to Claim 29 is found in the specification as originally filed at Figure 10 and paragraphs 40, 121 and 122. Claims 11 and 32 have been amended to be dependent on newly-independent Claim 29. As there is no mention or discussion of gas release passageways in U.S. Patent No. 6,634,864, the objection to Claims 11, 29 and 32 on the ground of nonstatutory obviousness-type double patenting is improper and should be withdrawn.

Claims 1, 4, 9, 10, 12, 15 and 31 having been canceled herein, and Claims 11, 29 and 32 having been amended to recite subject matter that is not disclosed in the cited reference, Applicants maintain that there are no longer grounds for the instant non-statutory obviousness-type double patenting objection. Applicants further urge withdrawal of the double-patent

rejection based on Claims 1, 4, 9-12, 15 and 29-32. Further consideration of the claims and specification are respectfully urged.

SECOND OBJECTION BASED ON DOUBLE PATENTING

In paragraph nine at pages five and six of the Office Action dated 5 June 2007, the Examiner objected to Claim 5-8 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 16 of U.S. Patent No. 6,634,864, stating that the claims "are not patentably distinct from each other."

In order to overcome the Examiner's objections to Claims 5-8 based on nonstatutory obviousness-type double patenting, Applicants would be willing to consider filing a terminal disclaimer to disclaim that portion of a patent term that would otherwise extend beyond the term of the '864 patent. However, Applicants defer doing so until all pending and remaining prosecutorial matters are resolved in the instant application.

As Applicants have indicated their willingness to file a Terminal Disclaimer to overcome the double patenting objections to Claims 5-8, the instant objection based on double patenting should be removed. Applicants respectfully request further consideration of the specification and remaining claims towards allowance.

THIRD, FOURTH AND FIFTH OBJECTIONS BASED ON DOUBLE PATENTING

In paragraphs ten through fourteen on pages five through ten of the Office Action dated 5 June 2007, the Examiner variously objected to Claims 13, 19 and 21-25 on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over U.S. Patent No. 6,634,864 alone and in view of Wilkinson (U.S. Pat. No. 4,325,345) and Schladitz (U.S. Pat. No. 3,869,242).

Applicants herein cancel Claims 13, 19 and 21-25. The objections to Claims 13, 19 and 21-25 having been rendered moot, Applicants urge withdrawal of the double patenting rejections to Claim 13, 19 and 21-25. Further consideration of the specification and claims is courteously urged at this time.

CONCLUSION

Claims 1, 4-13, 15, 19, 21-25 and 29-32 are pending in the application. Claims 1, 4, 9, 10, 12, 13, 15, 19, 21-25, 30 and 31 are cancelled; Claims 11, 29 and 32 are amended. No new claims have been added.

The Examiner's objection to the drawings based on previously amended Claim 9 has been overcome. The objections to Claims 1, 4, 9, 10, 12, 13, 15, 19, 21-25 and 31 on the ground of nonstatutory obviousness-type double patenting over U.S. Pat. No. 6,634,864 either alone or variously in combination with Wilkinson (U.S. Pat. No. 4,325,345) and Schladitz (U.S. Pat. No. 3,869,242) have been overcome. Withdrawal of these rejections is therefore respectfully urged.

Applicants would be willing to file a Terminal Disclaimer to overcome the obviousness-type double patenting rejection to Claims 5-8, once prosecution of the remaining claims has been closed on the merits.

Applicants maintain that Claims 11, 29 and 32 define novel and non-obvious subject matter of the present invention. In view of the foregoing Amendments and Remarks, it is respectfully submitted that the Claims now presented herein are patentable over the art of record, and that this application is now in condition for allowance. Such favorable action is earnestly solicited. If the next action is other than to allow the claims, the undersigned requests the favor of a short telephonic interview.

Respectfully submitted,



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